

DR. MANJIT SINGH ACHAR SINGH & ORS.

v.

HO YONG SEE & ANOR.

HIGH COURT MALAYA, IPOH  
PEH SWEE CHIN J  
[CIVIL APPEAL NO. 38 OF 1984]  
23 MAY 1987

**LANDLORD AND TENANT:** *Agreement - Recovery of controlled premises - Premises required for clinic - Tenants were carrying on business as pawn broker - Whether all the owners had a present need for the premises - Whether tenants would suffer hardship - Control of Rent Act 1966, ss. 2, 16(1)(f).*

This was a claim for vacant possession of controlled premises under s. 16(1)(f), Control of Rent Act 1966. The first plaintiff who was a doctor required the premises for a clinic. He had a clinic on Pangkor Island but he wanted to set up a clinic within Sitiawan. He wanted to close the clinic at Pangkor Island instead of travelling there daily as he had a mild heart attack. Further, he knew many people at Sitiawan. The defendants carried on the business of pawnbroker. The shop had good security as it was near police station.

**Held:**

[1] In order to succeed under s. 16(1)(f), Control of Rent Act 1966, the owner had to establish a genuine present need. However, if the tenant could show that he would suffer hardship vacant possession would not be granted.

[2] Since only the plaintiff required the premises, vacant possession could not be granted. It had to be shown that all the joint owners required the premises.

*[Appeal allowed with costs.]*

**Cases referred to:**

*Perak Hauliers Ltd. v. Cycle & Carriage Co. Ltd. [1962] MLJ 9*  
*Rajaratnam v. Gunn Lay Teik & Anor. [1961] MLJ 199*  
*Liew Sam Lee v. Kwan Teck Meng & Ors. [1964] MLJ 369*

**Legislation referred to:**

Control of Rent Act 1966 ss. 2, 16(1)(b), (f), (m)  
Pawn Brokers Act 1972, s. 9(2)

*For the plaintiffs - I. Raj; M/s. Raj Selva & Co.*

*For the defendants - Henry Lim; M/s. Henry Lim & Co.*

**JUDGMENT**

**Peh Swee Chin J:**

The plaintiffs, the registered proprietors of certain controlled premises claimed vacant possession of the same under s. 16(1)(f) of the Control of Rent Act 1966 which is set out below for convenience:

16.(1) Except for an application made under ss. 18 and 18A for the recovery of possession of any controlled premises or any part thereof for the purpose of effecting or causing to be effected thereon any development, all applications for the recovery of possession of such

- a** premises or any part thereof shall be made to a Court; and no order or judgment for the recovery or possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given by the Court except in any of the following cases -
- (a) ...
- (b) ...
- b** (c) ...
- (d) ...
- (e) ...
- (f) whereby the owner of the controlled premises reasonably requires the same for occupation by himself or any member of his family or any person for whom he holds the premises in trust, and -

- c**
- (i) there has been no change by purchase in the ownership of the premises since 15 February 1942; or
- (ii) the tenancy has been determined by not less than one year's notice to quit and there has been no change by purchase in the ownership of the premises within one year next preceding the date of such notice:

- d** Provided that an order or judgment shall not be made or given on any ground specified in this paragraph if the Court is satisfied that, having regard to all the circumstances of the case, including the question whether other accommodation is available for the owner or the tenant, greater hardship would be caused by granting an order or judgment than by refusing to grant it:

- e** Provided further that in the case of a controlled premises being used by the tenant for business, trade or professional purposes an order or judgment shall not be made or given any grounds specified in this paragraph unless the Court is satisfied that the owner requires them for the purpose of carrying on his own business, trade or profession;

- f** I will now deal briefly with the relevant parts of the evidence which revealed the plaintiffs to be brothers; the 1st plaintiff, a medical practitioner; the 2nd plaintiff, a soldier and the 3rd plaintiff a police detective. Further it was not disputed that it was not only the 1st plaintiff who required the controlled premises in question for the purpose of setting up a medical practice there, with the other two plaintiffs supporting him in the action. In other words, the 1st plaintiff required the said premises for occupation by himself, and presumably, by members of his own family. Members of a family, it is interesting to point out, would not include brothers, please see s. 2 of the Control of Rent Act 1966.

- g** The 1st plaintiff had already one medical practice on Pangkor Island, and he wanted to set up a clinic at the said premises situated within Sitiawan town. He had not acquired other premises in Sitiawan because of high rent, a complaint shared by the defendants. He stated that if he set up the medical practice at the said premises, it was likely that he would close his clinic on the Pangkor Island because he wanted to avoid excessive travelling, living as he did in Sitiawan, and presumably having to travel daily to Pangkor Island; secondly he
- h** had a mild heart attack, and thirdly he was working as a medical officer in the District Hospital in Lumut and he had come to know a lot of patients. People in Sitiawan have always been served by the District Hospital at Lumut, if they want to be admitted to a hospital, there being no hospital in the town itself.

- i** The defendants carried on the business of pawn brokers. The 2nd defendant in his evidence complained that their pawn brokers' licence required them to carry out their business at the said premises. Any shift from the said premises would cause difficulties because a lot of

valuables were involved. Further the pawn shop had better security being quite near a police station. Their customers would lose confidence if they moved, and they would lose the customers who presumably were used to their place. It was not disputed their pawnshop was the only one in town.

**a**

The principles applicable to a claim for possession of controlled premises under provisions like s. 16 (1)(f) of the Control of Rent Act, 1966 were admirably and compendiously set out by Good JA in the case of *Perak Hauliers Ltd. v. Cycle & Carriage Co. Ltd.* [1962] MLJ 9 to the following effect.

**b**

First the owner must establish a genuine present need, and such need should not be purely based on considerations of preference and convenience. It must be something more than a mere desire but something much less than an absolute necessity. Then the tenant will have to prove that greater hardship will be caused by granting the order of possession than by refusing it and in this connection, the test is hardship and not mere inconvenience. The onus of proving the availability of adequate accommodation is on the owner, but the owner need not prove such accommodation to be suitable alternative which implies some measure of quality in addition to some quantitative measure, such onus of proving “suitable alternative accommodation” lies only in a case under s. 16(1)(m) of the Control of Rent Act 1966.

**c**

I was in entire agreement with the learned Magistrate who had directed himself correctly on the question of the genuine present need referred to in connection with the facts set out above. He also considered the case of *Rajaratnam v. Gunn Lay Teik & Anor.* [1961] MLJ 199, in which the fact that the owners’ son already had a medical practice in Setapak in Kuala Lumpur at the time of the action did not preclude their claim for possession of the premises in question at Batu Road, Kuala Lumpur for the purpose of their son setting a medical practice also at the Batu Road premises.

**d**

**e**

The learned Magistrate had also dealt very correctly with the question of proof of greater hardship which he held, on the evidence, the defendants had patently failed to establish. In my view, theirs was the only pawnshop in Sitiawan which would be sought after by people in dire need of money thus possessing in real terms the attributes of a monopoly. Shifting of valuables would be mere transient inconvenience. The learned Magistrate had also pointed out that s. 9(2) of the Pawn Brokers Act 1972 would permit a change of address of a pawn broker’s business. A pawn broker has always a great deal of cash resources and cannot be described as impecunious when it comes to paying “non-controlled” rent for other premises, presumably more impressive premises which can possibly enhance the confidence of his customers; I have said this because of the defendants’ complaint of loss of their customer’s confidence if they had to shift. The learned Magistrate had not erred when he came to the conclusion that the defendants had failed to prove any hardship at all. Further, from the evidence which came also from the defendants, other available premises would appear to be more adequate. It is a notorious fact of which I may take judicial notice that a new township has been and is still being developed around and near the old town of Sitiawan. I would be surprised if there has not been already an excess of other accommodation in that new township and that such plentiful other accommodation has not already gone begging also.

**f**

**g**

**h**

Except for one unfortunate but decisive factor, the appeal of the defendants would have had no merit at all.

The unfortunate but decisive factor arose in this way. Of the 3 plaintiffs/registered proprietors, it was common ground that only the 1st plaintiff, (a medical practitioner), required the controlled premises for occupation by himself, and presumably members of his family.

**i**

- a** In the statement of defence filed, apart from a general prayer that the plaintiffs' claim be dismissed with costs, the defence stated, as per para. 6 that:

The defendants state that on the other hand, there is only one of the plaintiffs who requires the said premises to operate a clinic and that ...

- b** The learned defence Counsel made a pointed submission on the point before the learned Magistrate as set out in his notes of the submission heard by him, appearing in the appeal record as follows:

- c** We must look as who is the actual landlord of this premises at No. 18, Jalan Sitiawan, Sitiawan. Looking at the evidence, they are three landlords - they are first, second and third plaintiffs. The landlord being the registered co-owners of this premises which is a controlled premises within the Rent Control Act 1966. They sought to recover the premises under s. 16(1)(f) of the Act. I submit that this section does not apply to the present case. This is so because in the present case, they are three owners. In the statement of claim, the plaintiff said they want to use the premises for their own business. From the evidence adduced, second and third plaintiffs are not medical men. It is only the first defendant who is a doctor. Therefore, only the first defendant actually requires the premises for his own use as a clinic.

- d** I have quoted *in extenso* the submission of Counsel for the defendants in the Court below, principally because of another submission of the learned Counsel for the plaintiff advanced for the first time in this case before me on appeal that the point of the 1st plaintiff being the only person requiring the said premises for a clinic had not been pleaded in the Court below.

- e** From the para. 6 and the quoted notes of submission recorded by the learned Magistrate, a reasonable reading of them would have left anyone in no doubt that the defence had raised the objection that only one of the 3 plaintiffs, and not all the plaintiffs, required the said premises for occupation by himself, an objection that went to the root of s. 16 (1)(f) of the Control of Rent Act 1966 under which the plaintiffs had claimed vacant possession of the said premises. If the plaintiffs had entertained any doubt as to whether this objection was intended or not by the said para. 6 of the statement of defence, a short letter for particulars and addressed to the defendant's solicitors would have undoubtedly cleared the air.
- f** When the submission was made before the learned Magistrate, over the said objection, no complaint was made at all there about the submission being outside the pleadings or otherwise irrelevant. I did not think I could accede to Counsel's submission that the point had not been pleaded in the Court below, bearing in mind, in particular, that such submission was made for the first time on appeal before me. I very much suspect that this particular defence raised by the defendants had been taken far too lightly by the plaintiffs as either frivolous, or no substance as not to merit a second glance. This wrong impression or the plaintiff's complacency could have been brought about by the failure of the defendants to cite some reported cases to back up their argument.

- g** There could not be the slightest doubt that only the 1st plaintiff required the said premises for occupation by himself or members of his family. Such being the case, the decision of the Federal Court in *Liew Sam Lee v. Kwan Teck Meng & Ors* [1964] MLJ 369, by which I was bound, would prove to be the bane for the plaintiffs' claim for possession.
- h**

- The effect of the Federal Court case is that, if controlled premises are required by **some but not all** the joint owners, then the joint owners cannot recover the premises in question in an action of the kind under s. 16 (1)(b) of the Control of Rent Act 1966. There is no conceivable reason to suggest that the decision was given *per incuriam* and it has guided the legal profession for well over twenty years.
- i**

In the circumstances, I therefore allowed the appeal of the defendants/tenants with costs against the plaintiffs/owners. I had further ordered that the deposit for security for costs be paid out to the defendants (respondents in this appeal) to account of costs to be taxed.

Also found at [1988] 1 CLJ 802

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